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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 30, 2018

SEAN F. McAVOY, CLERK

8 LISA MARIE P. N.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL
SECURITY,

12 Defendant.

No. 2:17-CV-00160-RHW

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

13 Before the Court are the parties' cross-motions for summary judgment, ECF
14 Nos. 12 & 17. Plaintiff brings this action seeking judicial review, pursuant to 42
15 U.S.C. § 405(g), of the Commissioner's final decision, which denied her
16 application for Supplemental Security Income under Title XVI of the Social
17 Security Act, 42 U.S.C § 1381-1383F. After reviewing the administrative record
18 and briefs filed by the parties, the Court is now fully informed. For the reasons set
19 forth below, the Court **GRANTS** Defendant's Motion for Summary Judgment and
20 **DENIES** Plaintiff's Motion for Summary Judgment.

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 1**

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I. Jurisdiction

Plaintiff filed her application for Supplemental Security Income on February 11, 2013. AR 230-36. Her amended alleged onset date of disability is February 11, 2013. AR 13, 40. Plaintiff's application was initially denied on May 1, 2013, AR 121-24, and on reconsideration on July 15, 2013, AR 128-29.

A hearing with Administrative Law Judge ("ALJ") Caroline Siderius occurred on July 23, 2015, AR 37-59, and on September 24, 2015, AR 60-98. On October 22, 2015, the ALJ issued a decision finding Plaintiff ineligible for disability benefits. AR 11-30. The Appeals Council denied Plaintiff's request for review on March 15, 2017, AR 1-5, making the ALJ's ruling the "final decision" of the Commissioner.

Plaintiff timely filed the present action challenging the denial of benefits, on May 10, 2017. ECF No. 3. Accordingly, Plaintiff's claims are properly before this Court pursuant to 42 U.S.C. § 405(g).

II. Sequential Evaluation Process

The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be

1 under a disability only if the claimant's impairments are of such severity that the
2 claimant is not only unable to do his previous work, but cannot, considering
3 claimant's age, education, and work experience, engage in any other substantial
4 gainful work that exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B).

5 The Commissioner has established a five-step sequential evaluation process
6 for determining whether a claimant is disabled within the meaning of the Social
7 Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v.*
8 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

9 Step one inquires whether the claimant is presently engaged in "substantial
10 gainful activity." 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful
11 activity is defined as significant physical or mental activities done or usually done
12 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in
13 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§
14 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

15 Step two asks whether the claimant has a severe impairment, or combination
16 of impairments, that significantly limits the claimant's physical or mental ability to
17 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe
18 impairment is one that has lasted or is expected to last for at least twelve months,
19 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &
20 416.908-09. If the claimant does not have a severe impairment, or combination of

1 impairments, the disability claim is denied, and no further evaluative steps are
2 required. Otherwise, the evaluation proceeds to the third step.

3 Step three involves a determination of whether any of the claimant's severe
4 impairments "meets or equals" one of the listed impairments acknowledged by the
5 Commissioner to be sufficiently severe as to preclude substantial gainful activity.
6 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;
7 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or
8 equals one of the listed impairments, the claimant is *per se* disabled and qualifies
9 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to the
10 fourth step.

11 Step four examines whether the claimant's residual functional capacity
12 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f) &
13 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant is
14 not entitled to disability benefits and the inquiry ends. *Id.*

15 Step five shifts the burden to the Commissioner to prove that the claimant is
16 able to perform other work in the national economy, taking into account the
17 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),
18 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this
19 burden, the Commissioner must establish that (1) the claimant is capable of
20 performing other work; and (2) such work exists in "significant numbers in the

1 national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,
2 676 F.3d 1203, 1206 (9th Cir. 2012).

3 **III. Standard of Review**

4 A district court's review of a final decision of the Commissioner is governed
5 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the
6 Commissioner's decision will be disturbed “only if it is not supported by
7 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,
8 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than a
9 mere scintilla but less than a preponderance; it is such relevant evidence as a
10 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*
11 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d
12 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining
13 whether the Commissioner’s findings are supported by substantial evidence, “a
14 reviewing court must consider the entire record as a whole and may not affirm
15 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*
16 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879
17 F.2d 498, 501 (9th Cir. 1989)).

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
20 1992). If the evidence in the record “is susceptible to more than one rational

1 interpretation, [the court] must uphold the ALJ's findings if they are supported by
2 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,
3 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
4 2002) (if the “evidence is susceptible to more than one rational interpretation, one
5 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,
6 a district court “may not reverse an ALJ's decision on account of an error that is
7 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is
8 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.
9 The burden of showing that an error is harmful generally falls upon the party
10 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

11 **IV. Statement of Facts**

12 The facts of the case are set forth in detail in the transcript of proceedings
13 and only briefly summarized here. Plaintiff was 44 years old at the alleged date of
14 onset. AR 230. She has a high school education and at least four years of college
15 and she is able to communicate in English. AR 264, 266. Plaintiff has past work as
16 a call center employee, check processor, checker, and nanny. AR 29, 254, 266.
17 Plaintiff has a history of alcohol abuse and methamphetamine and cocaine use. *See*
18 AR 16, 21-25, 43.

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V. The ALJ's Findings

The ALJ determined that Plaintiff was not under a disability within the meaning of the Act from February 11, 2013, through the date of the ALJ's decision. AR 14, 29-30.

At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since February 11, 2013 (citing 20 C.F.R. § 416.971 *et seq.*). AR 15.

At step two, the ALJ found Plaintiff had the following severe impairments: degenerative disc disease, obesity, sleep disorder, personality disorder, affective disorder, and anxiety disorder (citing 20 C.F.R. § 416.920(c)). AR 15.

At **step three**, the ALJ found that Plaintiff did not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 17.

At step four, the ALJ found Plaintiff had the residual functional capacity to perform less than medium work, except: she can lift thirty pounds occasionally and fifteen pounds frequently; sit up to six hours in a day; stand/walk up to six hours in a day, one hour at a time; no climbing ladders, ropes, or scaffolds; no operation of heavy machinery or equipment; no work at unprotected heights; she could do simple repetitive tasks with only occasional detailed work; no jobs with more than occasional use of independent decision making; occasional brief contact with the

1 general public; and occasional non-collaborative contact with coworkers. AR 18-
2 19.

3 The ALJ found Plaintiff able to perform her past relevant work as a check
4 processor as it is actually and generally performed. AR 22.

5 **VI. Issues for Review**

6 Plaintiff argues that the Commissioner's decision is not free of legal error
7 and not supported by substantial evidence. Specifically, he argues the ALJ erred
8 by: (1) improperly discrediting Plaintiff's subjective complaint testimony; (2)
9 improperly evaluating the medical opinion evidence; and (3) improperly assessing
10 Plaintiff's residual functional capacity.

11 **VII. Discussion**

12 **A. The ALJ did not err in finding Plaintiff's subjective complaints not** 13 **entirely credible.**

14 An ALJ engages in a two-step analysis to determine whether a claimant's
15 testimony regarding subjective symptoms is credible. *Tommasetti v. Astrue*, 533
16 F.3d 1035, 1039 (9th Cir. 2008). First, the claimant must produce objective
17 medical evidence of an underlying impairment or impairments that could
18 reasonably be expected to produce some degree of the symptoms alleged. *Id.*
19 Second, if the claimant meets this threshold, and there is no affirmative evidence
20 suggesting malingering, "the ALJ can reject the claimant's testimony about the

1 severity of [her] symptoms only by offering specific, clear, and convincing reasons
2 for doing so.” *Id.*

3 In weighing a claimant's credibility, the ALJ may consider many factors,
4 including, “(1) ordinary techniques of credibility evaluation, such as the claimant's
5 reputation for lying, prior inconsistent statements concerning the symptoms, and
6 other testimony by the claimant that appears less than candid; (2) unexplained or
7 inadequately explained failure to seek treatment or to follow a prescribed course of
8 treatment; and (3) the claimant's daily activities.” *Smolen*, 80 F.3d at 1284. When
9 evidence reasonably supports either confirming or reversing the ALJ's decision, the
10 Court may not substitute its judgment for that of the ALJ. *Tackett v. Apfel*, 180
11 F.3d 1094, 1098 (9th Cir.1999). Here, the ALJ found that the medically
12 determinable impairments could reasonably be expected to produce the symptoms
13 Plaintiff alleges; however, the ALJ determined that Plaintiff’s statements of
14 intensity, persistence, and limiting effects of the symptoms were not entirely
15 credible. AR 20. The ALJ provided multiple clear and convincing reasons for
16 discrediting Plaintiff’s subjective complaint testimony. AR 18-25.

17 In this case, the ALJ found evidence of malingering. AR 16, 23, 25. This is
18 supported by the record. *See Benton ex. el. Benton v. Barnhart*, 331 F.3d 1030,
19 1040 (9th Cir.2003) (finding of affirmative evidence of malingering will support a
20 rejection of a claimant’s testimony). The ALJ noted that Plaintiff’s mental testing

1 performed by Dr. Mabee was invalid because Plaintiff was over reporting her
2 symptoms and likely exaggerating her current emotional functioning; Dr. Mabee
3 thought this might be a done as a plea for help. AR 16, 23, 390. Dr. Zwart noted
4 that there is a question of malingering and her results should be interpreted with
5 caution, and this may be a function of personality disorder. AR 25, 667. In May
6 2013, during a psychiatric consult it was noted that Plaintiff's tests suggest over-
7 reporting of symptoms and she may be subjectively reporting symptoms in excess
8 of those on objective assessment. AR 447. Dr. Harmon reported that Plaintiff is
9 providing exaggerated, unrealistic information about her mental health difficulties.
10 AR 403. In 2015, Plaintiff reported to her therapists that she will manipulate her
11 way out of talking about what needs to be addressed. AR 25, 756.

12 In addition to malingering, the ALJ provided multiple clear and convincing
13 reasons to discount Plaintiff's credibility that are supported by the record. AR 18-
14 25. The ALJ found Plaintiff's allegations of disabling limitations are belied by her
15 daily activities and her credibility is effected by her many inconsistent statements.
16 *Id.* Activities inconsistent with the alleged symptoms are proper grounds for
17 questioning the credibility of an individual's subjective allegations. *Molina*, 674
18 F.3d at 1113 ("[e]ven where those activities suggest some difficulty functioning,
19 they may be grounds for discrediting the claimant's testimony to the extent that
20 they contradict claims of a totally debilitating impairment"); *see also Rollins v.*

1 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). An ALJ may rely on ordinary
2 techniques of credibility evaluation such as a witness's prior inconsistent
3 statements. *Tommasetti*, 533 F.3d at 1039.

4 Specifically, the ALJ noted that Plaintiff testified that her anxiety prevented
5 her from going anywhere. She testified that she sat in her bedroom all day long
6 except to shower or clean. AR 76. However, in August 2013, she told her therapist
7 that she kept "pretty busy". AR 527. Plaintiff, at different times, reportedly went to
8 the casino alone, went to the casino with a friend, and went gambling. AR 20, 505,
9 760. Plaintiff was also able to travel to Arizona to visit her mother in December
10 2013 and December 2014. AR 670, 779. And Plaintiff testified that she drove
11 hours to visit her daughter in Idaho. AR 85-86. Furthermore, although Plaintiff
12 reported that she did not spend time with others and was isolated; however, she
13 discussed friends in therapy, testified that she spent time with a friend shopping
14 and going to the casino, regularly attended group meetings, had a year-long sexual
15 relationship, and regularly has other people that she lets live with her. AR 18-25,
16 84, 468, 480, 501. Plaintiff is also able to live on her own and take care of all of
17 her daily needs. AR 18-25, 666. The ALJ reasonably found that Plaintiff's daily
18 activities and inconsistent statements contradict her allegations of total disability.

19 The ALJ also noted frequent and repeated inconsistent statements regarding
20 her substance abuse. AR 18-25. An ALJ may weigh a claimant's inconsistent

1 statements about their drug use against the credibility of their allegations. *Thomas*
2 *v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002); *Verduzco v. Apfel*, 188 F.3d 1087,
3 1090 (9th Cir. 1999). Specifically, noted that Plaintiff told a doctor in 2013 that she
4 had not used any alcohol in two years and had not used methamphetamine in 8
5 years. AR. 390. However, just one month prior to making this statement, Plaintiff
6 was intoxicated and tested positive for methamphetamines. AR 338, 373. Plaintiff
7 testified at the hearing that she stopped drinking in February 2013. AR 91.

8 However, in May 2013, she reported consuming three beers the prior day and
9 admitting to consuming alcohol three days in row the week before. AR 444, 451.

10 Throughout 2013 and 2014, Plaintiff continued to make inconsistent statements to
11 her providers regarding her substance abuse. AR 508, 526, 544. In September
12 2014, Plaintiff's therapist questioned Plaintiff's claims of abstinence due to
13 Plaintiff's continued reports of the ineffectiveness of her medication. AR 21.

14 The ALJ also found that Plaintiff's allegations of complete disability are not
15 supported by the objective medical evidence and contradicted by the medical
16 findings in the record. AR 18-25. An ALJ may discount a claimant's subjective
17 symptom testimony that is contradicted by medical evidence. *Carmickle v.*
18 *Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008). Inconsistency
19 between a claimant's allegations and relevant medical evidence is a legally
20 sufficient reason to reject a claimant's subjective testimony. *Tonapetyan v. Halter*,

1 242 F.3d 1144, 1148 (9th Cir. 2001). There were minimal objective findings in the
2 record to support Plaintiff's claims of physical limitations. In December 2012, her
3 doctor reported no secondary signs or symptoms and she ambulated without
4 assistance. AR 340. In May 2013, Plaintiff reported that medications helped her
5 pain. AR 445. Imaging of Plaintiff's spine showed only minor degenerative
6 changes at L4-5 and L5-S1. AR 382. An examination showed that Plaintiff had no
7 spasm to palpation, 5/5 strength in her lower extremities, and normal ambulation
8 without an assistive device. AR 384. In December 2013, Plaintiff stated that
9 Gabapentin worked to control her back pain. AR 670. She complained of
10 worsening back pain in August 2014; however, there were no objective findings to
11 explain her reported symptoms. AR 685-86. The ALJ appropriately noted that the
12 medical evidence did not support the claimed severity of Plaintiff's sleep disorder.
13 AR 22-23. The ALJ also noted that Plaintiff's mental limitation claims are
14 contradicted by the record. Dr. W. Scott Mabee, M.D. found Plaintiff had an
15 invalid profile due to over reporting of negative symptoms and likely exaggeration
16 of her current functioning. AR 390. Plaintiff was frequently found to have normal
17 affect, not be anxious, and behaved appropriately for her age. AR 408. On exam,
18 Plaintiff was cooperative, had normal thought processes, had euthymic affect, and
19 fair judgment. AR 538-39. And in March 2014, Plaintiff's mental status, mood,
20 and affect were within normal limits. AR 467.

1 Further, the ALJ discounted Plaintiff's credibility due to noncompliance
2 with treatment. *Molina*, 674 F.3d at 1114; *Fair v. Bowen*, 885 F.2d 597, 603 (9th
3 Cir. 1989) ("Unexplained, or inadequately explained, failure to seek treatment . . .
4 can cast doubt on the sincerity of [a] claimant's pain testimony."). Despite
5 recommendations from her doctors that she partake in physical therapy, AR 384,
6 408, Plaintiff did not actually attend physical therapy until August 2014, AR 718,
7 and she was noncompliant with her at-home exercises, AR 725.

8 When the ALJ presents a reasonable interpretation that is supported by the
9 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d at 857.
10 The Court "must uphold the ALJ's findings if they are supported by inferences
11 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*
12 *Thomas*, 278 F.3d 947, 954 (if the "evidence is susceptible to more than one
13 rational interpretation, one of which supports the ALJ's decision, the conclusion
14 must be upheld"). The Court does not find the ALJ erred when discounting
15 Plaintiff's credibility because the ALJ properly provided multiple clear and
16 convincing reasons for doing so.

17 **B. The ALJ properly weighed the medical opinion evidence.**

18 **a. Legal Standard.**

19 The Ninth Circuit has distinguished between three classes of medical
20 providers in defining the weight to be given to their opinions: (1) treating

1 providers, those who actually treat the claimant; (2) examining providers, those
2 who examine but do not treat the claimant; and (3) non-examining providers, those
3 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th
4 Cir. 1996) (as amended).

5 A treating provider's opinion is given the most weight, followed by an
6 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the
7 absence of a contrary opinion, a treating or examining provider's opinion may not
8 be rejected unless "clear and convincing" reasons are provided. *Id.* at 830. If a
9 treating or examining provider's opinion is contradicted, it may only be discounted
10 for "specific and legitimate reasons that are supported by substantial evidence in
11 the record." *Id.* at 830-31.

12 The ALJ may meet the specific and legitimate standard by "setting out a
13 detailed and thorough summary of the facts and conflicting clinical evidence,
14 stating his interpretation thereof, and making findings." *Magallanes v. Bowen*, 881
15 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When rejecting a treating
16 provider's opinion on a psychological impairment, the ALJ must offer more than
17 his or his own conclusions and explain why he or she, as opposed to the provider,
18 is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

19 Additionally, "other sources" for opinions include nurse practitioners,
20 physicians' assistants, therapists, teachers, social workers, spouses, and other non-

1 medical sources. 20 C.F.R. §§ 404.1513(d), 416.913(d). An ALJ is required to
2 “consider observations by non-medical sources as to how an impairment affects a
3 claimant's ability to work.” *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir.1987).
4 Non-medical testimony can never establish a diagnosis or disability absent
5 corroborating competent medical evidence. *Nguyen v. Chater*, 100 F.3d 1462, 1467
6 (9th Cir.1996). An ALJ is obligated to give reasons germane to “other source”
7 testimony before discounting it. *Dodrill v. Shalala*, 12 F.3d 915 (9th Cir.1993).

8 **b. W. Scott Mabee, Ph.D.**

9 Dr. Mabee is an examining doctor who completed a psychological
10 evaluation for the Washington State Department of Social and Health Services in
11 January 2013. AR 27, 389-97. Dr. Mabee opined that Plaintiff had moderate to
12 marked limitation in many areas of functioning. AR 391.

13 The ALJ assigned little weight to Dr. Mabee’s opinion for multiple valid
14 reasons. AR 27. First, the ALJ noted that the opinion is largely based on Plaintiff’s
15 subjective complaints that have been found not entirely credible. AR 27. Dr.
16 Mabee declared the mental testing invalid due to over reporting of her negative
17 symptoms and her profile cannot be interpreted because her scores are likely an
18 exaggeration of her current emotional functioning. AR 390. There is no evidence
19 Dr. Mabee reviewed any medical records and was left primarily with the clinical
20 interview that provides a description of Plaintiff’s subjective complaints. AR 27,

1 389-90. An ALJ may discount even a treating provider's opinion if it is based
2 largely on the claimant's self-reports and not on clinical evidence, and the ALJ
3 finds the claimant not credible. *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir.
4 2014); *See also Williamson v. Comm'r of Soc. Sec.*, 438 F. App'x 609, 611 (9th
5 Cir. 2011) (ALJ did not err in affording less weight to opinion of treating physician
6 as to severity of claimant's symptoms, where physician acknowledged that her
7 conclusions were tentative and might over-represent degree of pathology because
8 objective testing showed exaggeration by claimant). Additionally, the ALJ found
9 Dr. Mabee's opinion was not supported by his own mental status examination. AR
10 27. Dr. Mabee noted that Plaintiff had appropriate appearance, normal speech,
11 normal eye contact, and goal directed thought content, she scored 29/30 on the
12 mini mental status exam and she tested normal in other areas of testing, such as the
13 trail making test, and she had mostly normal judgment and insight. AR 394-95. A
14 discrepancy between a doctor's recorded observations and opinions is a clear and
15 convincing reason for not relying on the doctor's opinion. *Bayliss v. Barnhart*, 427
16 F.3d 1211, 1216 (9th Cir. 2005).

17 When the ALJ presents a reasonable interpretation that is supported by the
18 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,
19 857. The Court "must uphold the ALJ's findings if they are supported by inferences
20 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*

1 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one
2 rational interpretation, one of which supports the ALJ’s decision, the conclusion
3 must be upheld”). Thus, the Court finds the ALJ did not err in his consideration of
4 Dr. Mabee’s opinion.

5 **c. Kaylee Islam Zwart, Ph.D.**

6 Dr. Zwart is an examining psychologist who performed a psychological
7 evaluation in November 2014. AR 26-27, 660-68. Dr. Zwart opined that Plaintiff
8 would have moderate to marked limitations in many areas of cognitive and social
9 functioning. AR 662.

10 The ALJ assigned little weight to Dr. Zwart’s opinion for multiple valid
11 reasons. AR 26-27. First, the ALJ found that the overall evidence, which
12 demonstrates generally mild or benign findings, did not support the degree of
13 limitation in the opinion. AR 27. An ALJ may reject a doctor’s opinion when it is
14 inconsistent with other evidence in the record. *See Morgan v. Comm’r of the Soc.*
15 *Sec. Admin.*, 169 F.3d 595, 602-603 (9th Cir. 1999). Next, the ALJ found Dr.
16 Zwart’s limitations opinion was not supported by her own mental status
17 examination. AR 27. In fact, Dr. Zwart observed that Plaintiff arrived early for her
18 appointment, was oriented times four, had normal eye contact and appropriate
19 affect, was well groomed, and seemed of average intelligence. AR 666-67. Dr.
20 Zwart found Plaintiff’s thought process and content, orientation, perception,

1 memory, fund of knowledge, concentration, abstract thought, and insight and
2 judgement were all within normal limits. AR 663. Plaintiff scored 30 out of 30 on
3 the mini mental status exam and had mostly normal results on other areas of
4 mental testing. AR 667. Dr. Zwart also noted that there was a question of
5 malingering and that the test results should be interpreted with caution. AR 667. A
6 discrepancy between a doctor's recorded observations and opinions is a clear and
7 convincing reason for not relying on the doctor's opinion. *Bayliss v. Barnhart*, 427
8 F.3d 1211, 1216 (9th Cir. 2005). Lastly, the ALJ noted that Dr. Zwart did not
9 review any medical records and the opinion was based in part on Plaintiff's self-
10 reports that have been found not entirely credible. AR 27. Indeed, a significant
11 portion of Dr. Zwart's notes are statements of what Plaintiff told her. AR 664-66.
12 An ALJ may discount even a treating provider's opinion if it is based largely on
13 the claimant's self-reports and not on clinical evidence, and the ALJ finds the
14 claimant not credible. *Ghanim*, 763 F.3d at 1162; *See also Williamson*, 438 F.
15 App'x at 611 (ALJ did not err in affording less weight to opinion of treating
16 physician as to severity of claimant's symptoms, where physician acknowledged
17 that her conclusions were tentative and might over-represent degree of pathology
18 because objective testing showed exaggeration by claimant).

19 When the ALJ presents a reasonable interpretation that is supported by the
20 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,

1 857. The Court “must uphold the ALJ's findings if they are supported by inferences
2 reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see also*
3 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one
4 rational interpretation, one of which supports the ALJ’s decision, the conclusion
5 must be upheld”). Thus, the Court finds the ALJ did not err in his consideration of
6 Dr. Zwart’s opinion.

7 **d. Dana Harmon, Ph.D.**

8 Dr. Harmon reviewed Plaintiff’s medical records in January 2013, for the
9 Department of Health and Services. AR 398-403. Dr. Harmon opined that Plaintiff
10 had moderate to marked limitations in most areas of functioning and Plaintiff could
11 work at a light exertional level. AR 27, 399-400.

12 The ALJ assigned little weight to Dr. Harmon’s opinion for valid reasons.
13 AR 27. First, the ALJ noted that Dr. Harmon’s opinion was provided prior to the
14 alleged onset date and when Plaintiff had just begun receiving mental health
15 treatment, and Dr. Harmon lacked significant records, including records of
16 Plaintiff’s substance abuse. AR 27. Additionally, the ALJ noted that Dr. Harmon’s
17 opinion merely consists of a check-box form with no objective findings or medical
18 explanation for the marked limitations. AR 27, 398-403. Dr. Harmon also found
19 that recent testing responses suggested that Plaintiff provided “exaggerated,
20 unrealistic information about her mental health difficulties.” AR 403. “[A]n ALJ

1 need not accept the opinion of a doctor if that opinion is brief, conclusory, and
2 inadequately supported by clinical findings.” *Bayliss v. Barnhart*, 427 F.3d 1211,
3 1216 (9th Cir. 2005). Furthermore, check-box form statements may be given less
4 weight when they are conclusory in nature and lack substantive medical findings to
5 support them or they are inconsistent with the underlying medical records. *Batson*
6 *v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *Garrison v.*
7 *Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). Additionally, the ALJ found that
8 Plaintiff is limited to less than medium work with additional limitations and
9 identified past relevant work Plaintiff can perform that is a light level job. AR 18-
10 19, 29.

11 When the ALJ presents a reasonable interpretation that is supported by the
12 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,
13 857. The Court “must uphold the ALJ’s findings if they are supported by inferences
14 reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see also*
15 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one
16 rational interpretation, one of which supports the ALJ’s decision, the conclusion
17 must be upheld”). Thus, the Court finds the ALJ did not err in his consideration of
18 Dr. Harmon’s opinion.

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1 **e. Jeffery Elmer, M.D.**

2 Plaintiff very briefly contends that the ALJ erred by not exploring Dr.
3 Elmer’s diagnosis of “impressive hypersomnia.” ECF No. 12 at 17; AR 705.
4 However, this diagnosis does not constitute an opinion by an acceptable medical
5 source. The regulations define “medical opinions” as “statements from physicians
6 and psychologists or other acceptable medical sources that reflect judgments about
7 the nature and severity of [a claimant’s] impairments(s), including [her] symptoms,
8 diagnosis and prognosis, what [she] can still do despite impairments(s), and [her]
9 physical or mental restrictions.” 20 C.F.R. § 416.927(a)(1). Dr. Elmer’s diagnosis
10 contains no mention of a specific severity, Plaintiff’s prognosis, how this condition
11 would limit or impair Plaintiff, or what Plaintiff can still do despite her
12 impairments. Thus, the ALJ had no duty to address this brief diagnosis and did not
13 err in not specifically addressing Dr. Elmer’s two word diagnosis of “impressive
14 hypersomnia.”

15 **f. Other Consultants**

16 Plaintiff argues the ALJ erred in giving more weight to the opinions of
17 Margaret Moore, Ph.D., James Bailey, Ph.D., Gary Nelson, Ph.D., and Robert
18 Hoskins, M.D. than to some of the other medical opinions in the record. ECF No.
19 12 at 15-17. The other doctors’ opinions have been discussed above. Plaintiff only
20 specifically argues that the ALJ erred in assigning more weight to the opinion of

1 Dr. Moore because of “Dr. Moore’s inexplicable focus on past substance abuse.”
2 ECF No. 12 at 16.

3 However, Plaintiff’s disagreement with the weighing of the evidence does
4 not establish error. It is the ALJ, and not the claimant, who is responsible for
5 weighing the evidence for probity and credibility. *See Sample v. Schweiker*, 694
6 F.2d 639, 643 (9th Cir. 1982). When the ALJ presents a reasonable interpretation
7 that is supported by the evidence, it is not the role of the courts to second-guess it.
8 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The Court “must uphold
9 the ALJ’s findings if they are supported by inferences reasonably drawn from the
10 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012); *see also Thomas v.*
11 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (if the “evidence is susceptible to more
12 than one rational interpretation, one of which supports the ALJ’s decision, the
13 conclusion must be upheld”). Additionally, It is the ALJ’s duty to explain why
14 “significant probative evidence has been rejected,” rather than explain why it was
15 not. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394–95 (9th Cir.
16 1984). Furthermore, great weight may legitimately be given to the opinion of a
17 non-examining expert who testifies at a hearing, such as Dr. Moore. *Andrews v.*
18 *Shalala*, 53 F.3d 1035, 1042 (9th Cir. 1995). Thus, the Court finds the ALJ did not
19 err in her evaluation of these medical opinions.

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1 **g. Diane Beernink, ARNP.**

2 Plaintiff briefly argues the ALJ erred by not providing clear and convincing
3 reasons for discounting Ms. Beernink's January 2013 opinion that Plaintiff is
4 limited to light work. ECF No. 12 at 17; AR 381. Ms. Beernink's opinion is
5 contradicted by the opinion of Robert Hoskins, M.D. AR 28, 115-17. The opinion
6 testimony of Ms. Beernink falls under the category of "other sources," and the ALJ
7 must give germane reasons for discounting it. *Dodrill v. Shalala*, 12 F.3d 915 (9th
8 Cir.1993).

9 The ALJ did not completely reject Ms. Beernink's opinion, but assigned it
10 partial weight. AR 28. The ALJ stated that partial weight is assigned because the
11 overall opinion is only partially supported by the objective findings. *Id.*
12 Specifically, the ALJ noted that the opinion that Plaintiff is able to work and did
13 not have a disabling condition is consistent with the objective findings that
14 Plaintiff had no spasms to palpitation, ambulated fluidly, and any limitations in
15 work activity were only mild. AR 28, 379-81. Additionally, the ALJ found that
16 Plaintiff is limited to less than medium work with additional limitations and
17 identified past relevant work Plaintiff can perform that is a light level job. AR 18-
18 19, 29.

19 When the ALJ presents a reasonable interpretation that is supported by the
20 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,

1 857. The Court “must uphold the ALJ's findings if they are supported by inferences
2 reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see also*
3 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one
4 rational interpretation, one of which supports the ALJ’s decision, the conclusion
5 must be upheld”). Thus, the Court finds the ALJ did not err in his consideration of
6 Ms. Beernink’s opinion.

7 **C. The ALJ properly assessed Plaintiff’s residual functional capacity.**

8 Plaintiff very briefly reargues that her assessed residual functional capacity
9 and the ultimate determination regarding disability did not account for all of her
10 limitations. ECF No. 12 at 18. The Court disagrees. The ALJ specifically stated
11 that all symptoms consistent with the medical evidence were considered in
12 assessing Plaintiff’s residual functional capacity. AR 19. The record shows the
13 ALJ did account for the objective medical limitations, so the Court finds no error.
14 The Court will uphold the ALJ’s findings when a claimant attempts to restate the
15 argument that the residual functional capacity finding did not account for all
16 limitations. *See Stubbs-Danielson*, 539 F.3d 1169, 1175-76 (9th Cir. 2008).

17 The ALJ properly framed the hypothetical question addressed to the
18 vocational expert. Additionally, the vocational expert identified a past relevant job
19 that Plaintiff can perform as it is actually and generally performed despite
20 Plaintiff’s limitations. AR 29. Thus, the Court finds the ALJ did not err in

1 assessing Plaintiff's residual functional capacity or in the ultimate determination
2 regarding disability.

3 **VIII. Conclusion**

4 Having reviewed the record and the ALJ's findings, the Court finds the
5 ALJ's decision is supported by substantial evidence and is free from legal error.

6 Accordingly, **IT IS ORDERED:**

7 1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.

8 2. Defendant's Motion for Summary Judgment, **ECF No. 17**, is

9 **GRANTED.**

10 3. Judgment shall be entered in favor of Defendant and the file shall be

11 **CLOSED.**

12 **IT IS SO ORDERED.** The District Court Executive is directed to enter this Order,
13 forward copies to counsel and **close the file**.

14 **DATED** this 30th day of July, 2018.

15 *s/Robert H. Whaley*
16 ROBERT H. WHALEY
Senior United States District Judge